REMARKS/ARGUMENTS

This Amendment is submitted in reply to the Office Action dated July 20, 2006, and within the three-month period for reply extending to October 20, 2006. Claims 13 and 18 are cancelled. Claims 1-12, 14-17, and 19-25 remain pending in the application.

Allowable Subject Matter

The Applicant acknowledges the Office's indication that claims 9, 10, 12, 14-17, and 21-24 would be allowable if rewritten to overcome the 35 U.S.C. 101 rejection. The Applicant also acknowledges the Office's indication that claims 11 and 18-20 are objected to as being dependent upon a rejected based claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The Applicant further acknowledges the Office's indication that claims 1-8 and 25 are allowed.

Rejections under 35 U.S.C. 101

Claims 9, 10, 12, 14-17, and 21-24 were rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. These rejections are traversed.

The Office asserts that claims 9, 10, 12, 14-17, and 21-24 do not produce a tangible result. The Office further states that to overcome the rejection, claim language should be added that includes outputting, displaying, storing, or otherwise conveying a result.

The four statutory categories of patentable subject matter under 35 U.S.C. 101 include: processes, machines, manufactures, and compositions of matter. The term process means process, art, or method. An invention sought to be patented should fall within at least one of the four statutory categories of patentable subject matter and be a

useful invention. The subject matter that courts have found to be outside of, or exception to, the four statutory categories of invention is limited to abstract ideas, laws of nature, and natural phenomena. Thus, abstract ideas, laws of nature, and natural phenomena are considered to be judicial exceptions to 35 U.S.C. 101. An invention that represents a practical application of one or more of the judicial exceptions may be patentable. The practical application of the judicial exception can be demonstrated if the invention transforms an article or physical object to a different state or thing. The practical application of the judicial exception can also be demonstrated if the invention produces a useful, concrete, and tangible result.

If an invention falls within one of the four statutory subject matter categories and possesses utility that is credible to one skilled in the art, the invention satisfies the requirements of 35 U.S.C. 101. The requirement to demonstrate a practical application of the invention based on the useful, concrete, and tangible result analysis is only applicable to an invention that represents a judicial exception, i.e., abstract idea, law of nature, or natural phenomena, to the four statutory subject matter categories, i.e., processes, machines, manufactures, and compositions of matter.

Claim 9 recites a system which falls within the statutory subject matter category of machines. The system of claim 9 does not represent either an abstract idea, a law of nature, or a natural phenomena. Therefore, the system of claim 9 does not represent a judicial exception to 35 U.S.C. 101. Because claim 9 does not represent a judicial exception to 35 U.S.C. 101, it is not necessary or appropriate to consider whether claim 9 represents a practical application of a judicial exception by producing a result that is useful, concrete, and tangible. However, per 35 U.S.C. 101, the system of claim 9 must possess utility that is credible to one skilled in the art. Claim 9 recites that the localizing system is for determining a physical location of a source. One skilled in the art would

consider the utility of claim 9 with regard to determining a physical location of a source to be credible.

In view of the foregoing, the Applicant submits that claim 9 is in fact directed to statutory subject matter per 35 U.S.C. 101, and is therefore patentable. Also, the Applicant submits that each of dependent claims 10, 12, and 14-16 is patentable for at least the same reasons as claim 9. The Office is requested to withdraw the rejections of claims 9, 10, 12, and 14-16.

Claim 17 recites a method which falls within the statutory subject matter category of processes. The method of claim 17 does not represent either an abstract idea, a law of nature, or a natural phenomena. Therefore, the method of claim 17 does not represent a judicial exception to 35 U.S.C. 101. Because claim 17 does not represent a judicial exception to 35 U.S.C. 101, it is not necessary to consider whether claim 17 represents a practical application of a judicial exception by producing a result that is useful, concrete, and tangible. However, per 35 U.S.C. 101, the method of claim 17 must possess utility that is credible to one skilled in the art. Claim 17 recites that the method is for ascertaining a physical location of a failed computer system in a data center. One skilled in the art would consider the utility of claim 17 with regard to ascertaining a physical location of a failed computer system in a data center to be credible.

The foregoing notwithstanding, the Applicant has amended claim 17 to incorporate the features of objected claim 18. The Office has indicated that previously pending claim 18 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Thus, amended claim 17 including the features of previously pending claim 18 is allowable.

For the record, it should be understood that the current amendments to claim 17 does not represent an acquiescence to the Office's rejection of claim 17 under 35 U.S.C.

101. The Applicant submits that the Office's rejection of claim 17 under 35 U.S.C. 101 is completely inappropriate. The current amendments to claim 17 are made in the sole interest of expediting prosecution of the subject application to allowance

In view of the foregoing, the Applicant submits that amended claim 17 is patentable. Also, the Applicant submits that each of dependent claims 21-24 is patentable for at least the same reasons as claim 17. The Office is requested to withdraw the rejections of claims 17 and 21-24.

Examiner Interview Summary

A telephonic interview was held between Applicant's agent Kenneth D. Wright and examiner Meagan S. Walling on October 11, 2006, to discuss the rejections under 35 U.S.C. 101. There was no agreement reached with regard to the rejections under 35 U.S.C. 101. Examiner Walling was notified that the Applicant would be contacting her supervisor to discuss the outstanding rejections.

A telephonic interview was held between Applicant's agent Kenneth D. Wright and supervisory patent examiner John Barlow on October 11, 2006, to discuss the rejections under 35 U.S.C. 101. Examiner Barlow indicated that the Applicant's arguments with regard to claim 9, as presented above, would be sufficient to overcome the rejection under 35 U.S.C. 101. Examiner Barlow further indicated that the Applicant's arguments with regard to the rejection of claim 17 under 35 U.S.C. 101, prior to the current amendments to claim 17, would not be sufficient to overcome the rejection under 35 U.S.C. 101. The Applicant expressed disagreement with examiner Barlow's position regarding claim 17.

The Applicant submits that all of the pending claims are in condition for allowance. Therefore, a Notice of Allowance is requested. If the Examiner has any questions concerning the present Amendment, the Examiner is kindly requested to contact the undersigned at (408) 774-6914. If any additional fees are due in connection with filing this Amendment, the Commissioner is authorized to charge Deposit Account No. 50-0805 (Order No. SUNMP242). A duplicate copy of the transmittal is enclosed for this purpose.

Respectfully submitted,
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